FEEDBACK ON DOE's SEPA Draft Status Reports, dated July 19, 2013 and August 9, 2013
Submitted by the Cultural Resources Interest Group Representatives

August 30, 2013

Feedback on Draft Status Report, July 19, 2013

Topic

- **'Finding's requirement for adopting flexible thresholds – Rule Section 197-11-800(1)(c)**
  Last year, Cultural Resources (CR) interests submitted proposals for the type of 'findings' a jurisdiction should demonstrate related to cultural resources prior to adoption of increased thresholds for SEPA review (Ecology has these proposals, so they are not reprinted here). The concern is that with increased thresholds, the probability that cultural resources will be adversely impacted increases. This concern was borne out in Clark County: in analyzing the impacts of increasing the SEPA flexible thresholds to the new maximum levels, the planning department staff report noted the increased potential for archaeological sites to be accidentally disturbed. In passing the increased thresholds, Clark County added a provision to begin utilizing DAHP's archaeological predictive model going forward. While this doesn't negate the increased potential for accidental discovery for those projects newly exempt from SEPA review, it is a measure that improves the county's review process for projects subject to SEPA in the future.

  CR interests continue to recommend that the following measures be required as part of a jurisdiction's 'findings' process:

  Before adopting increased flexible thresholds, a jurisdiction should demonstrate:
  - that a cultural resource management plan is incorporated into the Comprehensive Plan (through the GMA), **OR**
  - a local preservation ordinance or development regulations address pre-project review and standard inadvertent discovery language (SIDL)

  AND

  - In all cases, a data-sharing agreement should be in place with DAHP. And for all projects, whether they are exempt or not, SIDL should be included on all related permits (compliance with RCW 27.53, 27.44).

At the August Advisory Committee meeting, questions were raised about what constitutes a cultural resource management plan (CRMP). In short, a CRMP should be a plan:

- that contains both proactive and reactive elements;
- should include a plan for identification and evaluation of all cultural resources within the given jurisdiction;
- should include procedures to minimize damage to cultural resources through some review process

In addition, the plan could call for the integration of development regulations or the adoption of a local ordinance – both important measures for managing cultural resources. Ultimately,

this would be a plan vetted through DAHP. We would anticipate DAHP playing an active role in working with communities to develop an appropriate CRMP.

Another concern raised at the August meeting relates to jurisdictions adopting only certain elements of the new maximum thresholds, or adopting maximums below what is allowed. Should a single standard of findings be in place for any/all increases to the flexible thresholds? To date, the handful of jurisdictions adopting the flexible thresholds have all adopted the maximum thresholds allowed per the new rule in place for 2013. As such, the track record (albeit a relatively small sample size), suggests that if jurisdictions are going to increase their SEPA threshold, they are going to do so at the maximum levels allowed. There may be instances where jurisdictions adopt only certain elements of the new flexible thresholds: for example, air and noise. While these elements may not *directly* involve cultural resources, it is important to remember that is not the size of a project, but rather <u>the location</u> that poses to have the biggest impact on cultural resources. As such, the findings element should be in place for any increases.

- **Categorical Exemptions in general – Rule Section 197-11-800(2)-(25)**
  In those cases where adoption of increased thresholds have not been supported by adequate findings related to cultural resources, CR interests recommend that any project involving cultural resources automatically falls into the 'exceptions to the exemptions' category. Procedurally, if cultural resources were identified as part of a project undertaking, SEPA review would be required, <u>unless:</u>

  For Archaeology

  - There is a prior negative survey on file within the last 5 years; *or*
  - No ground disturbance is proposed; *or*
  - The project is in 100% culturally-sterile fill

If any single one of the above conditions is present, the project would be exempt from SEPA review.

For the built environment

- A building/structure is less than 45 years old; *and*
- The building/structure <u>is not</u> eligible for or listed in any historic register/survey.

Again, for all projects, include SIDL on all related permits.

Questions arose at the August meeting related to the 'planning-level' proposal vs. the 'project-level' proposal. Specifically, if jurisdictions adopted as part of their findings the 'planning-level' proposal elements, would the 'project-level' elements apply? The answer is no: if a jurisdiction enters into a data-sharing agreement with DAHP **<u>and</u>** implements a CRMP into its Comp Plan **<u>or</u>** institutes development regulations surrounding cultural resources/adopts a local preservation ordinance, then these measures will inform planning staff on how to proceed at the project level when cultural resources are involved.

- **Exemption for demolition of buildings - Rule Section 197-11-800(2)(f)**
  Currently, the rules provide an exemption for the demolition of a structure or facility that is

within the construction exemption, except for those structures with recognized historical significance. CR interests have recommended that this language be amended in the following manner:

> "The demolition and/or removal of any structure or facility, the construction of which would be exempted by subsections (1) and (2) of this section, except for structures or facilities listed in or eligible for listing in a national, state or local register."

This revision would make language in SEPA consistent with the generally accepted definitions/practices for determining significance. One of the concerns raised is that this would automatically trigger SEPA review for the demolition of any building, structure or facility over 45 years old. This is not the case. Rather, there are simple steps that could be taken within the planning office of each jurisdiction to determine significance, summarized as follows:

<u>For jurisdictions with a local ordinance/preservation program</u>
The lead planner would communicate with staff responsible for administering preservation duties, who would presumably do the following:

a. Check to see if the property in question is listed in the local register
b. Check to see if survey information is on file with the jurisdiction's historic property database (some jurisdictions have a far more sophisticated database system than others)
c. Utilize WISAARD (DAHP's online database) to determine if the property is listed in the National Register or the WA Heritage Register
d. Utilize WISAARD (DAHP's online database) to determine if an inventory form for the property is on file, and whether the inventory form includes a determination of eligibility.
e. If none of the above elicits information and the planner can reasonably assess the property may be historic, any info on the property should be forwarded to DAHP for review. This does not need to be a formal Determination of Eligibility process – it would be a phone call to staff at DAHP, accompanied with digital images of the property, for an informal discussion on whether the property should be considered exempt or go through SEPA review.

<u>For jurisdictions that do not have a local ordinance/preservation program, they should follow steps c-d above.</u>

Adding the term 'eligible' would <u>not</u> result in SEPA review for every property 45+ year's old. If the property has been extremely altered, it would automatically be ineligible for historic designation and thus exempt from SEPA review. This assessment can be made by looking at digital images of the property. While it may require on the part of the planner a basic understanding of integrity and character defining features, this is something planners have the ability to do. In reality, when you look at properties 45+ years old, many of them do not meet the integrity thresholds for being considered historic because of inappropriate alterations made over time.

- **Environmental Checklist (issues with specific questions)**
  1) Improvements to Question 13 (Historic and cultural preservation) are needed and SEPA Officials should have a process for assessing applicants' answers
  2) All three parts of Question 13 (a-c below) are usually answered in ignorance and often consist of "no," "no," "not applicable" with no indication of how the answer was determined:
     a) Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.
     b) Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.
     c) Proposed measures to reduce or control impacts, if any:

  Suggested fixes:

Revised questions:

13a. Are there any buildings or structures over 45 years old listed on or eligible for listing in national, state, or local preservation registers on or near to the site? If so, please record below. (Check DAHP website and with local historical societies or commissions).

13b. Is there any evidence of Indian or historic use or occupation, human burials or old cemeteries on or next to the site? Is there any material evidence, artifacts, or areas of cultural importance on or next to the site? Please list any professional studies conducted at the site to identify such resources.

13c. Proposed measures to avoid, mitigate, or minimize disturbance to resources. Please include plans for the above and any permits that may be required. (Please see RCW 27.44, 27.53, RCW 68.50 and 68.60 to see if permits may be required).

- **Cultural Resource Proposals included in the record**

  CR interests appreciate the time and consideration allotted to our specific proposals at the August meeting of the advisory committee. We were concerned to note that the proposals specifically related to 'project & planning level' review were not included in the DOE draft status reports dated July 19 & August 9, 2013, respectively. As DOE continues to work on draft rule language, we do hope to see the proposals included in the record.